

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3621 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NATUBHAI UKABHAI

Versus

NARAN LALA METAL WORKS LTD

Appearance:

MR TR MISHRA for Petitioner

MR KM PATEL for Respondent

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 05/02/97

ORAL JUDGEMENT

Rule. Service of Rule is waived by learned advocate Mr. K.M.Patel for the respondent.

The challenge in this petition under Articles 226 and 227 of the Constitution of India is against rejection of a reference of an industrial dispute in Reference No.194 of

1987 by the Labour court at Navsari recorded on 28.9.1995 at the instance of the unsuccessful workman.

After having examined the facts and circumstances and having heard the learned advocates appearing for the parties, and considering the celebrated principle that procedural law is hand-made and not mistress, this court is satisfied that the impugned award rejecting the Reference is not only unjustified but radiates an imprint of misreading of cause title and evidence and also tainted with illegality requiring interference of this court in this petition.

The Labour court in its award has mainly rejected the Reference on the ground that it was against a dead person. In this connection, it may be mentioned that a reference under Section 10(1) of the Industrial Disputes Act, 1947 ('ID Act') was referred to the Labour court in respect of an industrial dispute between employer and employee whose names are mentioned in the cause title and in the Reference itself. A bare perusal of the title leaves no manner of doubt that the first party employer consisted of Mohanbhai Kansara and Maheshbhai Kansara c/o Naran Lala Metal Works, Navsari. Obviously, the second party's name is that of a workman about which there is no dispute. The Labour court could not have and should not have rejected the reference in toto merely on the ground that one Mohanbhai Kansara was a dead person at the time when the reference came to be made though one Maheshbhai Kansara was also one of the persons on the employer side. Apart from that, in reality, what was in the mind of the parties is exhibited and manifested from the record and it was, as such, reference of an industrial dispute between employer Naran Lala Metal Works Company on one side and the respondent-original applicant-workman Natubhai Ukabhai on the other. The statement submitted on behalf of the employer states in para 2 as to what was the period during which the respondent-workman was employed and had done the work. Ofcourse, this contention is advanced as an alternative defence. It is true that in para 2, it was also mentioned that it was an alternative contention. The written statement on behalf of the employer was verified by Maheshbhai Kansara who was Director-Finance of NaranLala Metal Works Limited. The application dated 6.7.1989 was given on behalf of the employer as if it was given on behalf of the company as it is very clear from the application that Maheshbhai Mohanlal Kansara signed as Director-Finance for and on behalf of Naran Lala Metal Works Limited. There is no doubt in the mind of this court that the employer who had employed the workmen was Naran Lana Metal Works

Limited but on account of misdescription was wrongly mentioned in the cause title which would *prima facie* lead to an inference that reference is made against Mohanbhai Kansara and Maheshbhai Kansara c/o Naran Lala Metal Works Limited as if in their individual capacity.

Assuming for the sake of argument for a moment that the reference was against two persons, if Naran Lala Metal Works is excluded, then only because one of the parties on the employer side is found not alive, does not necessarily invite fatality for rejection of the reference in case of an industrial dispute of the workman as other party viz. Maheshbhai Kansara was already on record who incidentally happened to be a Director-Finance of Naran Lala Metal Works Limited.

It is true that legal position is very clear with regard to character of a Corporation or a company. The company or corporation as a separate entity and incorporated to a company is a statutory authority and others can maintain against the corporation with its own name. We are dealing with a case of a workman who raised an industrial dispute under the ID Act which is a benevolent Act. The interpretation and expression of the procedural law should be such as to advance the substantive cause of justice. No technicality can be permitted to thwart the rightful claim. Substantive justice cannot be sacrificed on the alter of technicality nor such rightful claim can be jettisoned on such plea.

Taking into account the over-all picture emerging from the record of the present case and bearing in mind the aforesaid principles of law and interpretation of pleadings as well as interpretation, this court has no slightest hesitation in mind that the impugned award is not only unjustified but is manifestly illegal which has culminated into miscarriage of justice upon interpretation made by the Labour court. Impugned award if accepted, that means that if one of the named persons dies, the reference should die. It is not correct and legal. This court is, therefore, satisfied that there is a fit and proper case for interference with the impugned award of the Labour court rejecting the reference on the approach of technical aspect which is unjust, perverse and illegal.

In light of the aforesaid facts and circumstances and the relevant proposition of law, this petition is required to be allowed quashing the impugned award. Accordingly, this petition is allowed with costs. Rule is accordingly made absolute.

A parting thought may be necessary. The industrial dispute raised by the petitioner workman is as old as of 1987 which has undergone so far long legal conduit pipe and which has unfortunately culminated into rejection of the Reference which is quashed by this court and the matter is required to be remitted to the Labour court for disposal in accordance with law. In view of these circumstance, it would be open for the petitioner to move the Labour court for expeditious hearing and it would be open for the Labour court to accord priority to such matter which is undergoing the legal battle since long.
